IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3322 OF 2004

M/s.Kakda Impex (I) Pvt.Ltd. .. Petitioner.
V/s.
The Union of India & Others .. Respondents.

Mr.V.S. Nankani with Mr.M. Baya i/b. Munir Merchant for the petitioner.
Mr.A.J. Rana, senior counsel with Ms.S.V. Bharucha for the respondents.

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.

DATED : 23RD FEBRUARY, 2005.

P.C. :

Heard learned counsel for the petitioner and the respondents.

2. By this petition, the petitioner is challenging the order of the CESTAT dated September 30, 2004 whereby the Tribunal has directed the petitioner to make a predeposit of Rs.50,00,000/- towards duty and Rs.25,00,000/- towards penalty against the total demand of Rs.4,54,34,776/- and penalty of equal amount.

3. It is the contention of the learned counsel for the petitioner Shri Nankani that the Tribunal ought not to have ordered predeposit in the facts and circumstances of the case and in any event the amount of Rs.54,46,284/- which has already been deposited by the petitioner with the respondents must be taken into account towards predeposit and the petitioner

may be permitted to deposit the balance amount of Rs.20,53,716/- [Rs.75,000/- - Rs.54,46,284 = Rs.20,53,176/-]. According to Mr.Rana, learned counsel for the respondents, the amount deposited by the petitioners have already been adjusted and the same cannot be treated as predeposit.

4. From the order of the Tribunal dated September 30, 2004 it is not clear as to whether the Tribunal has taken into account the aforesaid deposit of Rs.54,46,284/- which is due to the petitioner, while ordering said predeposit of Rs.50,00,000/- towards duty and Rs.25,00,000/- towards penalty. In this view of the matter, Mr.Nankani seeks liberty to move the Tribunal seeking clarification on the above issue.

5. Having regard to the facts and circumstances of the case, we permit the petitioner to move CESTAT seeking clarification as to whether the petitioner should be directed to deposit Rs.50,00,000/- towards duty and Rs.25,00,000/- towards penalty apart from the amount of Rs.54,46,284/- which is due to the petitioner and claimed by the respondents that the said amount has already been adjusted.

6. The writ petition stands disposed of in above terms.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)